

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JEREMY JOSEPH STROHMEYER,

Plaintiff,

v.

K. BELANGER et al.,

Defendants.

3:14-cv-661-RCJ-WGC

SCREENING ORDER

Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections (“NDOC”), has submitted an amended civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an application to proceed *in forma pauperis*, a motion requesting leave to file a new application to proceed *in forma pauperis*, and a motion for leave to file an amended complaint. (ECF No. 4, 5, 7, 7-1). The Court now screens Plaintiff’s civil rights complaint pursuant to 28 U.S.C. § 1915A.

I. IN FORMA PAUPERIS APPLICATION¹

Before the Court is Plaintiff’s application to proceed *in forma pauperis*. (ECF No. 5). Based on the information regarding Plaintiff’s financial status, the Court finds that Plaintiff is not able to pay an initial installment payment toward the full filing fee pursuant to 28 U.S.C. § 1915. Plaintiff will, however, be required to make monthly payments toward the full \$350.00 filing fee when he has funds available.

II. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which a prisoner

¹ The Court grants Plaintiff’s motion requesting leave to file a new application to proceed *in forma pauperis* (ECF No. 4). The operative application to proceed *in forma pauperis* is located at ECF No. 5.

1 seeks redress from a governmental entity or officer or employee of a governmental entity. See
2 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss
3 any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted
4 or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C.
5 § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v.*
6 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. §
7 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the
8 Constitution or laws of the United States, and (2) that the alleged violation was committed by
9 a person acting under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

10 In addition to the screening requirements under § 1915A, pursuant to the Prison
11 Litigation Reform Act (PLRA), a federal court must dismiss a prisoner's claim, if "the allegation
12 of poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on which
13 relief may be granted, or seeks monetary relief against a defendant who is immune from such
14 relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which
15 relief can be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court
16 applies the same standard under § 1915 when reviewing the adequacy of a complaint or an
17 amended complaint. When a court dismisses a complaint under § 1915(e), the plaintiff should
18 be given leave to amend the complaint with directions as to curing its deficiencies, unless it
19 is clear from the face of the complaint that the deficiencies could not be cured by amendment.
20 See *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

21 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See *Chappel*
22 *v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a
23 claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the
24 claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir.
25 1999). In making this determination, the court takes as true all allegations of material fact
26 stated in the complaint, and the court construes them in the light most favorable to the plaintiff.
27 See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a *pro se*
28 complainant are held to less stringent standards than formal pleadings drafted by lawyers.

1 See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While the standard under Rule 12(b)(6) does not
 2 require detailed factual allegations, a plaintiff must provide more than mere labels and
 3 conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation
 4 of the elements of a cause of action is insufficient. *Id.*

5 Additionally, a reviewing court should “begin by identifying pleadings [allegations] that,
 6 because they are no more than mere conclusions, are not entitled to the assumption of truth.”
 7 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide the
 8 framework of a complaint, they must be supported with factual allegations.” *Id.* “When there
 9 are well-pleaded factual allegations, a court should assume their veracity and then determine
 10 whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining whether a
 11 complaint states a plausible claim for relief . . . [is] a context-specific task that requires the
 12 reviewing court to draw on its judicial experience and common sense.” *Id.*

13 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed *sua*
 14 *sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This includes
 15 claims based on legal conclusions that are untenable (e.g., claims against defendants who are
 16 immune from suit or claims of infringement of a legal interest which clearly does not exist), as
 17 well as claims based on fanciful factual allegations (e.g., fantastic or delusional scenarios).
 18 See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989); see also *McKeever v. Block*, 932 F.2d
 19 795, 798 (9th Cir. 1991).

20 **III. SCREENING OF AMENDED COMPLAINT²**

21 In the amended complaint, Plaintiff sues multiple defendants for events that took place
 22 while Plaintiff was incarcerated at Lovelock Correctional Center (“LCC”), Ely State Prison
 23 (“ESP”), and High Desert State Prison (“HDSP”). (ECF No. 7-1 at 1). Plaintiff sues
 24 Defendants K. Belanger, Correctional Officer Bequefuth, Board of Prisons, Inmate Michael
 25 Bobadilla, Sgt. David Carpenter, Tara Carpenter, Correctional Officer C. Cartier, Catherine
 26 Cortez Masto, Dwayne Deal, S.L. Foster, Correctional Officer James Fox, Starlin Gentry, M.

27
 28 ² The Court grants Plaintiff’s motion for leave to file an amended complaint (ECF No. 7). The Court now screens the amended complaint (ECF No. 7-1).

1 Gilder, Donna Jenkins, James Keener, K. Kirkpatrick, Robert LeGrand, Ross Miller, Nevada
2 Department of Corrections, Office of the Inspector General, Valaree Olivas, C. Ruiz, C.
3 Rutherford, LCC AWO Sandy, C. Schardin, S. Sisco, State of Nevada, Adam Vallaster,
4 Michael Ward, Lt. Whiteman, John Witting, and John Does. (*Id.* at 5-13). Plaintiff alleges
5 eleven counts and seeks declaratory relief, injunctive relief, and monetary damages. (*Id.* at
6 26, 32-36).

7 **A. Counts I and II**

8 In Count I, Plaintiff alleges the following: On December 18, 2012, Inmate Bobadilla
9 jumped Plaintiff without provocation while Plaintiff was eating in the LCC protective
10 segregation dining hall. (ECF No. 1-1 at 14-15). Bobadilla repeatedly punched Plaintiff in the
11 face and head. (*Id.* at 15). Two days prior, Bobadilla had been in a physical fight with
12 another inmate and had received numerous injuries. (*Id.*). Jenkins had encouraged Bobadilla
13 to attack Plaintiff in retaliation for the previous grievances that Plaintiff had filed against her.
14 (*Id.*). Vallaster, whose post was close enough to stop the attack, had left his post and left
15 Plaintiff defenseless as soon as the attack started. (*Id.*). Whiting should have been at his
16 post but was not there. (*Id.*). There were several inmate witnesses to the attack. (*Id.* at 16).
17 After the attack, prison officials put Plaintiff into solitary confinement, pending a hearing, where
18 Plaintiff remains to this day. (*Id.*).

19 Between December 18, 2012 and December 20, 2012, Jenkins filed a report which
20 falsely accused Plaintiff of starting the fight and stabbing Bobadilla with a pencil, which he did
21 not do. (*Id.*). Bobadilla's injuries had been from the fight he was in two days earlier. (*Id.*).
22 On December 18, 2012, Bobadilla falsely accused Plaintiff of stabbing him with a pencil. (*Id.*
23 at 16-17). Bobadilla had planted a pencil near the attack. (*Id.* at 17). Ward destroyed the
24 fingerprints and DNA evidence on the pencil when Ward fondled, twirled, and played with the
25 pencil with his bare hands. (*Id.*). On December 20, 2012, Olivas filed a falsified notice of
26 charges against Plaintiff without any meaningful investigation of the incident. (*Id.*).

27 Between December 18, 2012 and March 10, 2013, Keener, the investigator,
28 suppressed or destroyed evidence by withholding photographs of Bobadilla's alleged injuries

1 from the December 16, 2012 fight and the December 18, 2012 attack, evidence of the
2 December 16th fight between Bobadilla and another inmate, Bobadilla's medical records from
3 both incidents, the alleged pencil used as a weapon, and exculpatory witness statements.
4 (*Id.*). Jenkins, Olivas, and Keener set up the attack in retaliation for previous grievances that
5 Plaintiff had filed. (*Id.*).

6 Plaintiff is confined to a cell for 23 hours a day in solitary confinement. (*Id.*). Plaintiff
7 is permitted to exercise once every two or three days. (*Id.* at 17-18). Plaintiff has been
8 deprived of his property; the ability to work; the ability to attend educational and vocational
9 programs and religious services; and the ability to interact with other inmates. (*Id.* at 18).
10 After Plaintiff completed his disciplinary sentence in September 2013, he requested a transfer
11 back to LCC. (*Id.*). However, on April 3, 2014, LCC prison officials blocked the transfer. (*Id.*).
12 ESP continued to hold Plaintiff in solitary confinement until shipping Plaintiff to HDSP. (*Id.*).
13 Plaintiff is in solitary confinement at HDSP. (*Id.*). Plaintiff alleges an Eighth Amendment
14 violation. (*Id.* at 15).

15 In Count II, Plaintiff alleges the following: Jenkins had filed a false report against
16 Plaintiff through email after her shift had ended without her title, printed name, or signature on
17 it in violation of an administrative regulation. (ECF No. 7-1 at 19). Olivas had filed a false
18 notice of charges for assault and battery against Plaintiff less than 48 hours after the incident
19 without conducting a meaningful investigation. (*Id.*). Keener did not test the pencil for DNA
20 to prove Plaintiff's innocence and violated Plaintiff's rights by not adequately investigating the
21 incident. (*Id.*). Gentry had violated Plaintiff's due process rights during the disciplinary hearing
22 by convicting Plaintiff of those charges, putting Plaintiff in disciplinary segregation, and taking
23 away Plaintiff's good time credits. (*Id.*). Gentry did not disclose photographs and medical
24 records of Bobadilla's injuries, did not inform Plaintiff of Bobadilla's fight on December 16th,
25 did not produce the alleged weapon, did not disclose Keener's investigation results, did not
26 let Plaintiff call all of his witnesses, did not let Plaintiff confront Bobadilla, and did not permit
27 Plaintiff to confront Olivas. (*Id.* at 20). Instead of permitting Plaintiff to question his witnesses,
28 Gentry questioned the witnesses over the phone. (*Id.*). Le Grand later overturned that

1 conviction. (*Id.* at 19).

2 On March 10, 2013, Plaintiff had a second disciplinary hearing with Carpenter. (*Id.* at
3 20). Plaintiff was not given adequate notice of the hearing before the hearing. (*Id.*).
4 Carpenter violated Plaintiff's due process rights by not disclosing photographs and medical
5 records of Bobadilla's injuries, not informing Plaintiff of Bobadilla's fight on December 16th, not
6 producing the alleged weapon, and not disclosing Keener's investigation results. (*Id.*).
7 Carpenter also relied on evidence not in the written disposition. (*Id.*). Plaintiff was not
8 permitted to fully defend himself because he could not call all of his witnesses, was not
9 permitted to confront Bobadilla, was not permitted to question Olivas, and was not to permitted
10 to have his inmate witnesses present or directly question them in person. (*Id.* at 20-21).
11 Plaintiff alleges a due process violation. (*Id.* at 19).

12 The Court interprets Counts I and II as claims for due process violations. In order to
13 state a cause of action for deprivation of procedural due process, a plaintiff must first establish
14 the existence of a liberty interest for which the protection is sought. *Sandin v. Conner*, 515
15 U.S. 472, 487 (1995). In *Sandin*, the Supreme Court held that a prisoner has a liberty interest
16 when confinement "imposes [an] atypical and significant hardship on the inmate in relation to
17 the ordinary incidents of prison life." *Id.* at 484. In *Sandin*, the Supreme Court focused on
18 three factors in determining that the plaintiff possessed no liberty interest in avoiding
19 disciplinary segregation: (1) disciplinary segregation was essentially the same as discretionary
20 forms of segregation; (2) a comparison between the plaintiff's confinement and conditions in
21 the general population showed that the plaintiff suffered no "major disruption in his
22 environment;" and (3) the length of the plaintiff's sentence was not affected. *Id.* at 486-87.

23 When a protected liberty interest exists and a prisoner faces disciplinary charges, prison
24 officials must provide the prisoner with (1) a written statement at least twenty-four hours before
25 the disciplinary hearing that includes the charges, a description of the evidence against the
26 prisoner, and an explanation for the disciplinary action taken; (2) an opportunity to present
27 documentary evidence and call witnesses, unless calling witnesses would interfere with
28 institutional security; and (3) legal assistance where the charges are complex or the inmate

1 is illiterate. See *Wolff v. McDonnell*, 418 U.S. 539, 563-70 (1974).

2 “When prison officials limit an inmate’s efforts to defend himself, they must have a
3 legitimate penological reason.” *Koenig v. Vannelli*, 971 F.2d 422, 423 (9th Cir. 1992). An
4 inmate’s right to present witnesses may legitimately be limited by “the penological need to
5 provide swift discipline in individual cases . . . [or] by the very real dangers in prison life which
6 may result from violence or intimidation directed at either other inmates or staff.” *Ponte v.*
7 *Real*, 471 U.S. 491, 495 (1985). Jail officials “must make the decision whether to allow
8 witnesses on a case-by-case basis, examining the potential hazards that may result from
9 calling a particular person.” *Serrano v. Francis*, 345 F.3d 1071, 1079 (9th Cir. 2003). Despite
10 this, an inmate has no right to cross-examine or confront witnesses in prison disciplinary
11 hearings. See *Wolff*, 418 U.S. at 567-68.

12 The Court finds that Plaintiff fails to state a due process claim. Plaintiff does not have
13 the right to cross-examine or confront witnesses in a prison disciplinary hearing. Additionally,
14 Plaintiff does not have the right to look at another inmate’s confidential medical file. Also,
15 prison officials did permit Plaintiff to call witnesses—just not all of them. As such, Court
16 dismisses Plaintiff’s due process claim with prejudice, as amendment would be futile.

17 **B. Count III**

18 In Count III, Plaintiff alleges the following: On December 24, 2012, Gentry violated
19 Plaintiff’s Sixth Amendment right to counsel. (ECF No. 7-1 at 21). According to Plaintiff,
20 Nevada law requires that Plaintiff have counsel at any disciplinary hearing where the charge
21 would constitute a felony in criminal court. (*Id.*). Gentry did not inform Plaintiff of his right to
22 counsel and did not ask Plaintiff if he wanted an attorney. (*Id.*). On March 10, 2013,
23 Carpenter did not inform Plaintiff of his right to counsel and did not ask Plaintiff if he wanted
24 an attorney. (*Id.* at 22).

25 The Court dismisses this claim. The Sixth Amendment applies to criminal prosecutions.
26 U.S. Const., amend. VI. A prison disciplinary hearing is not a criminal prosecution. The
27 Supreme Court has held that prisoners have no automatic right to counsel in prison
28 disciplinary hearings, but if the inmate is illiterate or the issues are complex, the prisoner must

1 be provided with some legal assistance. See *Vitek v. Jones*, 445 U.S. 480, 495-96 (1980).
2 As such, the Court dismisses this claim with prejudice, as amendment would be futile. To the
3 extent that Plaintiff is attempting to allege a state law claim, Plaintiff should file that claim in
4 state court. See *Galen v. Cnty. of Los Angeles*, 477 F.3d 652, 662 (9th Cir. 2007) (holding
5 that 42 U.S.C. § 1983 does not provide a cause of action for violations of state law).

6 **C. Count IV**

7 In Count IV, Plaintiff alleges the following: On December 25, 2012, Plaintiff submitted
8 a book approval request form to order and receive the Prisoners' Self Help Litigation Manual.
9 (ECF No. 7-1 at 22). Prison officials did not return this request with an approval until February
10 12, 2013. (*Id.*). This extreme delay was in retaliation for Plaintiff filing complaints against
11 known and unknown defendants during and after December 18, 2012, to prevent Plaintiff from
12 petitioning the government for redress with the assistance of the self-help manual. (*Id.*).
13 Before December 18, 2012, any and all book request approvals had been returned to Plaintiff
14 in less than 14 days. (*Id.*).

15 Up until December 30, 2012, Plaintiff had sent and received mail from his wife without
16 any delays for two years while at LCC. (*Id.* at 23). However, starting on December 30, 2012,
17 unknown LCC mail room staff began interfering with Plaintiff's mail. (*Id.*). This continued until
18 Plaintiff transferred to ESP on April 5, 2013. (*Id.*). Plaintiff alleges that the book delay and
19 mail interference were retaliatory. (*Id.*).

20 Prisoners have a First Amendment right to file prison grievances and to pursue civil
21 rights litigation in the courts. *Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir. 2004). "Without
22 those bedrock constitutional guarantees, inmates would be left with no viable mechanism to
23 remedy prison injustices. And because purely retaliatory actions taken against a prisoner for
24 having exercised those rights necessarily undermine those protections, such actions violate
25 the Constitution quite apart from any underlying misconduct they are designed to shield." *Id.*

26 To state a viable First Amendment retaliation claim in the prison context, a plaintiff must
27 allege: "(1) [a]n assertion that a state actor took some adverse action against an inmate (2)
28 because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's

1 exercise of his First Amendment rights, and (5) the action did not reasonably advance a
2 legitimate correctional goal.” *Id.* at 567-68.

3 The Court dismisses this claim with prejudice. Plaintiff has only provided conclusory
4 allegations to this claim. Plaintiff has not provided any factual allegations that the library staff
5 or mail room officers knew that Plaintiff had filed any grievances or had engaged in any other
6 type of protected conduct and that the delays were in response to those activities. Additionally,
7 Plaintiff has not alleged how a delay in receiving his book request or letters from his wife
8 chilled his First Amendment rights. Moreover, Plaintiff would not have been able to file a civil
9 rights lawsuit until after he exhausted his claims which would have taken longer than the 14
10 days that Plaintiff usually received approvals.

11 **D. Count V**

12 In Count V, Plaintiff alleges the following: On December 18, 2012, Spencer searched,
13 inventoried, and secured Plaintiff’s property in order to send Plaintiff to solitary confinement.
14 (ECF No. 7-1 at 23). On December 19, 2012, Cartier went through Plaintiff’s legal work, read
15 it, and seized an unknown number of legal documents including documents which contained
16 proof of prior bad acts by Jenkins. (*Id.* at 23-24). Prison officials have not returned those
17 documents. (*Id.* at 24). Plaintiff alleges a Fourth Amendment violation. (*Id.* at 23).

18 The Court interprets this as a due process claim. While an authorized, intentional
19 deprivation of property is actionable under the Due Process Clause, neither a negligent nor
20 intentional unauthorized deprivation of property by a prison official is actionable if a meaningful
21 post-deprivation remedy is available for the loss. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984);
22 *Quick v. Jones*, 754 F.2d 1521, 1524 (9th Cir. 1985). An authorized deprivation is one carried
23 out pursuant to established state procedures, regulations, or statutes. *Logan v. Zimmerman*
24 *Brush Co.*, 455 U.S. 422, 436 (1982); *Piatt v. MacDougall*, 773 F.2d 1032, 1036 (9th Cir.
25 1985); *see also Knudson v. City of Ellensburg*, 832 F.2d 1142, 1149 (9th Cir. 1987).

26 Plaintiff fails to state a due process claim. Based on the allegations, Cartier engaged
27 in an intentional, unauthorized deprivation of property when he specifically went through
28 Plaintiff’s secured items and removed legal documents. The State of Nevada provides Plaintiff

1 with a meaningful post-deprivation remedy for this type of loss. See Nev. Rev. Stat. § 41.0322
2 (setting forth guidelines for actions by persons in custody of the NDOC to recover
3 compensation for loss or injury). As such, the Court dismisses this claim with prejudice, as
4 amendment would be futile.

5 **E. Count VI**

6 In Count VI, Plaintiff alleges that he was treated “differently than similarly situated
7 inmates during the disciplinary process and ensuing solitary confinement” and alleges an
8 equal protection violation. (ECF No. 7-1 at 24). The Court dismisses this claim with prejudice.
9 There are no allegations in the complaint to support the claim that prison officials treated
10 Plaintiff differently than other similarly situated inmates.

11 **F. Count VII**

12 In Count VII, Plaintiff alleges that he was denied his right to have a polygraphic
13 examination under state law. (ECF No. 7-1 at 24). The Court dismisses this claim and directs
14 Plaintiff to file this claim in state court. See *Galen v. Cnty. of Los Angeles*, 477 F.3d 652, 662
15 (9th Cir. 2007) (holding that 42 U.S.C. § 1983 does not provide a cause of action for violations
16 of state law).

17 **G. Count VIII**

18 In Count VIII, Plaintiff alleges that he had filed grievances against Feil in the mailroom
19 but LCC staff persuaded Plaintiff to drop those complaints. (ECF No. 7-1 at 25). In 2009,
20 Plaintiff filed a grievance against Jenkins for unlawful seizure of property. (*Id.*). This was one
21 of the grievances that Cartier had seized from Plaintiff on December 19, 2012. (*Id.*). Feil,
22 Jenkins, and Olivas are all friends. (*Id.*). Olivas harassed and intimidated Plaintiff since 2009
23 in retaliation for his complaints against Feil and then falsely charged Plaintiff for assault and
24 battery. (*Id.*). Keener, Gentry, Carpenter, and LeGrand retaliated against Plaintiff by
25 suppressing and ignoring evidence of Plaintiff’s innocence. (*Id.*). Plaintiff alleges retaliation.
26 (*Id.*).

27 The Court dismisses this claim with prejudice. Plaintiff has not provided any allegations
28 that establishes a causal connection between a grievance he filed in 2009 against Jenkins and

1 Olivas's alleged actions in 2012. Additionally, Plaintiff only provides conclusory allegations.

2 H. Count IX

3 In Count IX, Plaintiff alleges conspiracy but does not provide any factual allegations.
 4 (ECF No. 7-1 at 26). "To state a claim for a conspiracy to violate one's constitutional rights
 5 under section 1983, the plaintiff must state specific facts to support the existence of the
 6 claimed conspiracy." *Burns v. Cnty. of King*, 883 F.2d 819, 821 (9th Cir. 1989). The plaintiff
 7 must show "an agreement or meeting of the minds to violate constitutional rights," and "[t]o be
 8 liable, each participant in the conspiracy need not know the exact details of the plan, but each
 9 participant must at least share the common objective of the conspiracy." *Crowe v. Cnty. of*
 10 *San Diego*, 608 F.3d 406, 440 (9th Cir. 2010). The Court dismisses this claim with prejudice.
 11 Plaintiff only provides conclusory allegations that defendants in general conspired to violate
 12 his rights.

13 I. Counts X and XI

14 In Count X, Plaintiff alleges intentional infliction of emotional distress. (ECF No. 7-1 at
 15 26). In Count XI, Plaintiff alleges a state tort of assault and battery. (*Id.* at 26-27). The Court
 16 dismisses these state law claims and directs Plaintiff to file these claims in state court. See
 17 *Galen v. Cnty. of Los Angeles*, 477 F.3d 652, 662 (9th Cir. 2007) (holding that 42 U.S.C. §
 18 1983 does not provide a cause of action for violations of state law).

19 IV. CONCLUSION

20 For the foregoing reasons, **IT IS ORDERED** that Plaintiff's motion requesting leave to
 21 file a new application to proceed *in forma pauperis* (ECF No. 4) is GRANTED.

22 **IT IS FURTHER ORDERED** that Plaintiff's application to proceed *in forma pauperis*
 23 (ECF No. 5) without having to prepay the full filing fee is GRANTED. Plaintiff shall **not** be
 24 required to pay an initial installment fee. Nevertheless, the full filing fee shall still be due,
 25 pursuant to 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act. The movant
 26 herein is permitted to maintain this action to conclusion without the necessity of prepayment
 27 of fees or costs or the giving of security therefor. This order granting *in forma pauperis* status
 28 shall not extend to the issuance and/or service of subpoenas at government expense.

1 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by the
2 Prisoner Litigation Reform Act, the Nevada Department of Corrections shall pay to the Clerk
3 of the United States District Court, District of Nevada, 20% of the preceding month's deposits
4 to the account of Jeremy Joseph Strohmeyer, #59389 (in months that the account exceeds
5 \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk shall send a copy
6 of this order to the attention of **Albert G. Peralta, Chief of Inmate Services for the Nevada**
7 **Department of Prisons**, P.O. Box 7011, Carson City, NV 89702.

8 **IT IS FURTHER ORDERED** that, even if this action is dismissed, or is otherwise
9 unsuccessful, the full filing fee shall still be due, pursuant to 28 U.S.C. §1915, as amended by
10 the Prisoner Litigation Reform Act.

11 **IT IS FURTHER ORDERED** that Plaintiff's motion for leave to file an amended
12 complaint (ECF No. 7) is GRANTED.

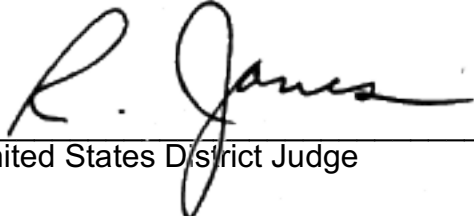
13 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file the amended complaint
14 (ECF No. 7-1).

15 **IT IS FURTHER ORDERED** that the amended complaint is dismissed in its entirety,
16 with prejudice, as amendment would be futile.

17 **IT IS FURTHER ORDERED** that this Court certifies that any *in forma pauperis* appeal
18 from this order would be taken "in good faith" pursuant to 28 U.S.C. § 1915(a)(3).

19 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment
20 accordingly.

21
22 Dated this 7th day of May, 2015.

23
24 
25 _____
26 United States District Judge
27
28